IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Appeal No.619 of 2000.

Date of decision: September 24th, 2007.

State of Himachal Pradesh. ……. Appellant.

Vs.

Satya Devi & Ors. ……. Respondents.

Coram

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting? No

For the Appellant: Mr.V.K. Verma,Addl. Advocate General.

For the Respondent: Mr.Vinay Thakur, Advocate.

Surinder Singh, J (oral):

The respondent faced trial and were acquitted by the Chief Judicial Magistrate under Sections 325, 323 and 506 read with Section 34 of the Indian Penal Code. The State felt aggrieved by the impugned judgment of acquittal, accordingly, filed the instant appeal.

I have heard Shri V.K. Verma, learned Additional Advocate General and Shri Vinay Thakur, learned counsel for the respondents and have carefully gone through the evidence on record.

In nut-shell, the prosecution story is that the complainant Smt. Soma Devi (PW1) on 1.9.1997 at about 8.30 a.m. was cutting grass along with her daughter Nirmala Devi in the **Ghasni**, which was allegedly in their possession. In the meantime, respondent Satya Devi along with her brother-in-law Jagat Ram, respondent came there and proclaimed that the said Ghasni belong to them as

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Whether reporters of local Papers may be allowed to see the judgment? Yes

to why, she was cutting the grass there. On this, the respondent Satya Devi snatched darati (sickle) from her hand and her brother-in-law gave a lathi blow on her back. It is further alleged that respondent Satya Devi after snatching darati, inflicted injury on the middle finger of the complainant. The complainant fell down, raised alarm and her husband reached there and rescued her from the respondents.

The matter was reported to the police vide rapat No.11. On the same day, she was medically examined. All the injuries were stated to be simple, as mentioned in the Medico Legal Certificate Ext.PW4/A. Injury on the middle finger was having incised wound, as such, a case under Section 324, 323, 506 read with Section 34 of the Indian Penal Code was formally registered in terms of FIR No.190/1997, in Police Station Sadar, Bilaspur. The police visited the spot, took into possession darati and a danda vide memos Exts.PW2/A and B respectively. The statements of the witnesses were also recorded and after the completing of challan, it was presented in the court for trial.

It is pertinent to note that there was no fracture, it is not understood as to how the trial court had framed the charge under Section 325 of the Indian Penal Code against the respondents. It means the trial court did not apply its mind to the facts of the case. However, the charges were denied by the respondents. They pleaded not guilty and claimed trial. The prosecution led its evidence to prove the case and the respondents were also examined under Section 313 of the Code of Criminal Procedure. No defence was led. Upon consideration of the evidence and after hearing the parties, the respondents were acquitted.

The impugned judgment of acquittal has been disputed in appeal, on the ground that the learned trial court did not appreciate

the evidence of the prosecution rightly and if the statement of the injured coupled with the statements of other witnesses are perused, it can be converted into conviction.

Contra, Shri Vinay Thakur, learned counsel for the respondents has supported the reasoning given by the trial court for acquitting the respondents.

As a matter of fact, admittedly the parties are not in speaking terms with each other for the last about 5-6 years because of the strained relations. Even PW2 Ram Lal, the husband of the complainant has admitted in the cross-examination that they have inimical relations with the respondents. Therefore, the statements of the complainant and her witnesses who are the close relatives are required to be closely scrutinized.

On the first look, the regrettable features of the case came to the fore that during the investigation, the Investigating Officer has not bothered to take into possession the revenue papers of the disputed land, in order to know and establish, who are the persons recorded as owners in possession of the ghasni in question. It was incumbent upon the Police Officer to ascertain about the actual possession of the ghasni in question, for the reasons that the respondents have been asserting their own possession over the disputed land because the respondent Satya Devi had commanded as to how and under what authority, the complainant was cutting the grass from that portion of the land which is in their possession. There appears to be bonafide dispute over the possession of the Ghasni.

Secondly, Nirmala Devi, daughter of the Soma Devi was accompanying her and at the very relevant time. She was not examined to substantiate the version of the complainant. PW3 is Smt. Shankari Devi, the real sister of the complainant. Though, she

has tried to corroborate the version of the complainant, but she had not witnessed the incident. She has also admitted in her cross-examination that no beatings were given by the respondents in her presence. Even PW1 in her cross-examination has stated that Shankri Devi was not present on the spot and her husband Ram Lal (PW2) was on duty and after hearing her cries, he came to the spot. It is also stated by her that her husband used to be on night duty at a distance of about five furlong away from the disputed place and according to PW2 Ram Lal, he came to the spot on hearing the cries of his wife, appears to be doubtful, for the reasons that if he had heard the cries from such a long distance, as alleged, it would have taken enough time to reach the spot, whereas, when he reached the spot, according to him, Jagat Ram respondent was giving beatings to his wife with danda, also appears to be doubtful. This fact goes to the root of medico legal certificate Ext.PW4/A. There is only superficial wound on the middle finger and reddish bruise on the lumber region of the spine and on the scapular region. Had the respondent Jagat Ram given her repeated danda blows in that event the complainant would have received black and blue injuries at different parts of the body. Doctor S.K. Patial (PW4) has stated that these injuries could be caused by a fall.

In nut-shell, when no plausible explanation was given by the Investigating Officer (PW5) as to why he did not obtain the revenue papers of the land in question and PW6 Punnu Ram has not supported the case of the prosecution regarding recoveries and also does not prove the presence of Satya Devi respondent on the spot, the prosecution case, can not be accepted on its face value.

Further, where there is enmity inter-se the parties and there are glaring contradictions in the statements of the prosecution witnesses, including the injured, a reasonable doubt is arisen,

regarding authenticity of the prosecution case. Therefore, the conviction against the respondent cannot be sustained. Hence, I am in agreement with the findings of the acquittal, recorded by the trial court. Accordingly, the appeal is dismissed.

The bail bonds of the respondents, entered upon at any stage during the proceedings of this case stand discharged.

September 24, 2007. **(Surinder Singh)**
(PDS) **Judge**.